

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver of Various Petitioners)	PS Docket No. 12-94
to Allow the Establishment of 700 MHz)	PS Docket No. 06-229
Interoperable Public Safety Wireless)	
Broadband Networks)	

To: Chief, Public Safety and Homeland Security Bureau

COMMENTS OF THE STATE OF NEW JERSEY

The State of New Jersey (“New Jersey” or “State”) hereby submits these comments in response to the Public Notice issued by the Public Safety and Homeland Security Bureau (“Bureau”) regarding the transition process for 700 MHz public safety broadband waiver recipients.¹ As one of the 21 waiver recipients² and the awardee of a federal grant specifically for the purpose of constructing a public safety LTE network in the 700 MHz spectrum, the State endorses the comments filed by the Operators Advisory Committee to the Public Safety Spectrum Trust (“OAC”) and urges the Commission

¹ Public Notice, “Public Safety and Homeland Security Bureau Seeks Comment on transition Process for 700 MHz Public Safety Broadband Waiver Recipients,” DA 12-555 (rel. April 6, 2012) (“Notice”).

² On May 13, 2010, the Commission granted conditional waivers to twenty-one public safety jurisdictions. See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145, 5147 ¶ 7 (2010) (“*Waiver Order*”). The Bureau granted a twenty-second waiver, in May 2011, to the State of Texas (Texas) and required Texas to adhere to the cumulative conditions imposed on the initial waiver recipients. See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*). The 21 current waiver recipients include: City of Boston; City and County of San Francisco, City of Oakland, City of San Jose, CA; State of New Jersey; City of New York; City of San Antonio, TX, on behalf of the San Antonio Urban Area Security Initiative Region; City of Chesapeake, VA; State of New Mexico; City of Charlotte, NC; State of New York; District of Columbia; County of Maui, County of Hawaii, County of Kauai, City and County of Honolulu, and the State of Hawaii; City of Seattle, WA; Adams County, CO Communications Center; City of Pembroke Pines, FL; Los Angeles Regional Interoperable Communications System (LA-RICS); Iowa Statewide Interoperable Communications Systems Board; Calumet, Outagamie and Winnebago Counties, WI; Mississippi Wireless Communications Commission; City of Mesa, AZ and the TOPAZ Regional Wireless Cooperative; State of Oregon; State of Texas.

to transition and renew all of the waiver recipients' leases in the manner described therein. In renewing the leases and transitioning them to FirstNet, the Commission should also make clear that the leases include the additional 10 MHz of spectrum (the D Block spectrum) that Congress has allocated to the public safety national broadband network.³ The legislation reassigning the D Block to public safety envisions construction of a single network using the full 20 MHz of spectrum. Accordingly, the full 20 MHz of spectrum should be included under the leases. This pleading provides material for the record to inform the Commission's action as it specifically applies to the lease held by the State of New Jersey.

I. BACKGROUND

In May 2011, the Commission issued the *Waiver Order*, granting conditional permission to 21 petitioners, including the State, to use the spectrum licensed to the Public Safety Spectrum Trust ("PSST") for public safety broadband services. "By enabling early deployment in this band," the Commission wrote, "we take a major step towards development of a nationwide interoperable public safety broadband wireless network."⁴ As a condition of the permission, the Commission required that each petitioner enter into a specific leasing arrangement with the PSST for use of the spectrum. The State executed its lease with the PSST on September 2, 2010.

In August 2010, National Telecommunications and Information Administration ("NTIA") took another major step by awarding New Jersey a \$39 million grant under the Broadband Technology Opportunities Program ("BTOP") to build an LTE network in the Northern New Jersey Urban Area Security Initiative (USAI) region, under the authority the Commission granted the State in the *Waiver Order*. With both spectrum and funding in hand, New Jersey was finally able to help the Commission in its quest to develop a nationwide interoperable broadband network for public safety. The USAI program established through the Office of Homeland Security focuses on regional preparedness in major

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §6101 (2012) ("Spectrum Act").

⁴ *Waiver Order*, ¶ 1.

metropolitan areas. Northern New Jersey is one of six Tier 1 Urban Regions considered at greater risk of terrorist attack. The USAI region has a population of 4.5 million, covers 1487 square miles and serves over 32,000 first responders.

The State has since put a tremendous amount of work into implementing its grant, undertaking the planning, design, staffing, financial, procurement and governance work necessary to deploy the system. The State has made substantial progress on the project. To date, the State has:

- Established a project team, with technical, policy and management resources in place;
- Conducted environmental assessments on 114 LTE sites to comply with Federal requirements
- Engaged stakeholders at the highest levels of State government, establishing support for the project as well as expectations of successful implementation;
- Developed a detailed plan for implementation via the RFP process;
- Developed and implemented a project governance structure;
- Begun work on the site qualification process; and
- Drafted, released and amended a Request for Proposals (“RFP”) for the construction and operation of the system.

Though the State has always intended that its LTE system would become part of the future nationwide network, the governance mechanism for that nationwide network did not become clear until the enactment of the Spectrum Act on February 22, 2012.⁵ The Spectrum Act establishes the First Responder Network Authority (“FirstNet”) within NTIA and makes FirstNet responsible for taking “all actions necessary to ensure the building, deployment and operation of the nationwide public safety broadband network,” including holding a nationwide license for the spectrum currently licensed to the PSST combined with the spectrum known as the upper 700 MHz band “D Block.”⁶ The Spectrum Act further requires the Commission to “take all actions necessary to facilitate the transition” to FirstNet of the spectrum currently licensed to the PSST.⁷ The Spectrum Act does not refer to the leases, providing

⁵ Spectrum Act, § 6101.

⁶ *Id.*, §§ 6101, 6201, and 6206(b)(1).

⁷ *Id.*, § 6201(b)(1).

no indication as to how the Commission ought to address them as it facilitates the transition of the license. Through the Notice, the Bureau proceeds to meet its statutory obligation.

II. THE COMMISSION SHOULD RENEW THE NEW JERSEY LEASE

The New Jersey project is of particular value to the national public safety broadband initiative because it is uniquely positioned to maximize the benefits of early deployment and minimize any potential complications for FirstNet's nationwide deployment. With the lease renewed, New Jersey's funding is certain, the State will have time to work closely with FirstNet in the design and deployment of its system, and the New Jersey project can be a tightly coordinated, early deployment of the FirstNet network, a project developed hand-in-hand with FirstNet in an effort to test and demonstrate FirstNet's preferred technical and operational parameters prior to the production phase. The Commission and FirstNet have everything to gain and nothing to lose from a renewal of New Jersey's spectrum lease.

A. Failure to Renew the Lease Would Harm the BTOP-Funded State Project

New Jersey is one of the few jurisdictions—and even fewer states—with both permission to use the spectrum and the funding to execute a successful, valuable early deployment. If the State's lease is not renewed or if the certainty of the State's authority to use the spectrum is otherwise called into question, the project will be put at risk of financial difficulties and reduced vendor interest, thus reducing its chances of success.

Funding. The State's BTOP award specifically requires that New Jersey possess a lease for use of the spectrum, "The recipient shall comply with the requirements established in the Federal Communications Commission's (FCC) Order in PS Docket 06-229, adopted on May 11, 2010 (FCC 10-79) [(the *Waiver Order*)], and all subsequent orders and public notices regarding the use of the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz)."⁸ Though NTIA could relax that

⁸ NTIA Special Award Condition, Award NT10BIX5570105, Amendment 1, Paragraph A.

requirement, failure to continue the lease is currently grounds for terminating the grant. Without the BTOP grant, the State project would end.

In addition to the \$39 million awarded under BTOP, the State has also committed to contributing substantial matching funds to the project. Given the extremely challenging budget environment, the competition for State funds is fierce. The State has made the match commitment based on the expectation that it would be able to use the spectrum and make complete and unencumbered use upon completion of the project. Failure to renew the lease would compromise the potential value of the program and may impact the project's ability to deliver the value for the State's intended investment.

Competition Among Bidders. In response to its RFP, the State received a number of bids, each from a vendor or team of vendors capable of fulfilling the project's requirements. Such interest is more than sufficient to generate competition conducive to an attractive contractual arrangement for the State. The RFP, however, specified that the State possessed a lease, thus communicating to vendors that should they bid and win, they would be able to pursue the project to a successful completion, including testing and operation of the system. If the Commission were to call into question the State's ability to use the spectrum and thus complete the project, vendor interest—and thus competition—would undoubtedly wane.

B. Renewing the Lease Will Help the New Jersey Project Serve the Shared Goal of the Spectrum Act and the Commission.

The Spectrum Act is geared throughout to provide a single, interoperable network for public safety. This was also the Commission's goal in the *Waiver Order*: "[O]ur overarching goal remains finding the best method to enable public safety to have access to a state of the art nationwide

interoperable public safety wireless broadband network.”⁹ Renewing the New Jersey lease will place the State’s project in a unique position to serve that goal.

Driven by the extremely aggressive BTOP spending deadlines, the public safety LTE BTOP awardees have not had the benefit of consultation with FirstNet; likewise, FirstNet has had no opportunity to weigh in on the choices any of the awardees have made. Because FirstNet will not exist until August 2012, there has been no opportunity to coordinate the early-built systems in a way that targets issues of interest to FirstNet and maximizes the early-built systems’ utility in developing the specifications of the nationwide network.

As noted above, the State has issued an RFP for construction and operation of an LTE system, but it has not yet executed a contract with a vendor. In the intervening period, the President signed the Spectrum Act into law. As it turns out, the timing is fortuitous, resulting in what may in fact be a great benefit to the nationwide initiative. Suddenly, there is additional spectrum and substantial funding, and the national governance structure is becoming clear: the prospects for the single nationwide network have increased dramatically. NTIA quickly recognized the importance of coordinating early deployments with FirstNet decisions and called each BTOP awardee to suggest it delay its project spending (a marked reversal from prior direction) until more was known about First Net’s direction. Many early-build projects had already signed contracts with vendors, committed to timetables, purchased and even installed LTE equipment; for these projects, while delays and revisions to better align with FirstNet may be possible, implementing them could be a complex and perhaps costly endeavor. New Jersey, however, has yet to make a purchase commitment to a vendor.

Because of this fortuitous confluence of events, New Jersey is well positioned to work closely with FirstNet to identify those technologies, architectures, configurations and operational schemes FirstNet wishes to explore as it develops the nationwide requirements. New Jersey intends to form a

⁹ *Waiver Order*, ¶ 16.

partnership with FirstNet and build its project around the technical, operational and business aspects of the nationwide network that FirstNet would like to pilot, demonstrate, and test. In this role, New Jersey would work in partnership with FirstNet to understand and help guide FirstNet's formative specifications, and the State would implement its project to provide real-world experience with those specifications. Rather than designing and procuring equipment and services prior to FirstNet beginning its work, the State would work in coordination with and in support of FirstNet's efforts as envisioned in the Spectrum Act.

Without renewal of its lease, however, the State's ability to serve in this role may be harmed. As explained above, certainty that the State will be able to access the spectrum is important both to the project's ability to secure the State's cash matching contribution and maintain competitive interest from vendors. Renewing the lease will help the State help FirstNet and thereby support the goal of the Spectrum Act: the realization of a single, nationwide, interoperable network for public safety.

C. Early Deployment Is No Indication of Intent to "Opt In" or "Opt Out"

The Spectrum Act requires that each state's governor, following a specific timeline initiated by FirstNet, inform FirstNet whether the state wishes to participate in the FirstNet network or "opt out" and construct its own radio access network separate from the FirstNet initiative.¹⁰ New Jersey's BTOP project is in support of the FirstNet initiative and is not to be interpreted in any way as an indication of the State's view on the "opt in/opt out" decision. Indeed, the State envisions that the New Jersey project will be an early instance of the FirstNet network, deployed and placed into production prior to any "opt in/opt out" decision by the Governor.

¹⁰ Spectrum Act, § 6302(e)(2).

III. THE IMPACT OF LOSING THE AUTHORITY TO USE THE SPECTRUM

The particular timing of the New Jersey project allows it a high level of flexibility. As a result, the State could propose a major shift in project focus if the Commission did not renew the State's lease or otherwise continue its authorization to use the 700 MHz public safety broadband spectrum. In that case, if the State project nonetheless overcame the challenges the loss of spectrum access posed to its funding and its ability to maintain competitive vendor interest, as described above, the State expects that it would endeavor to re-cast its BTOP project to avoid the need for spectrum access.

Specifically, the State could propose to NTIA a substantial re-casting of its grant-funded project, using its BTOP funding solely to accomplish the planning, design, site acquisition, site preparation, and backhaul preparation work necessary to support a statewide LTE deployment. (By contrast, the current project, aligning with the goals of the Spectrum Act, requires an operational LTE roll-out in seven northern New Jersey counties.) Under this alternative scenario, though the project would make good use of the BTOP funds toward the eventual deployment of LTE for public safety, it would only include the preparatory aspects of the LTE deployment and would not extend to the aspects of deployment that require use of the spectrum for testing or operations.

Such an approach would be a major change in the State's project, and it would require working closely with NTIA to ensure that it could be made to conform to the requirements of BTOP. It also would not result in a working wireless broadband network for public safety; rather, it would be preparatory, accomplishing much of the important and difficult work that goes into a full LTE deployment, but it would not actually complete the LTE deployment itself.

IV. CONCLUSION

The Commission wrote the following in the *Waiver Order* addressing the value of early deployments:

These early deployments may also assist the Commission in understanding what additional issues may arise for public safety in

connection with the larger goal of establishing a nationwide interoperable broadband network and serve better to inform all parties as we proceed with the related rulemaking proceedings.¹¹

The same can be said of the benefit early deployments will provide FirstNet. As described above, New Jersey is particularly well-situated to provide this benefit and serve the goals of the Spectrum Act. For the reasons set forth above, the State of New Jersey urges the Commission to renew its spectrum lease.

Respectfully submitted,



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¹¹ *Waiver Order*, ¶ 11.